

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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**Z-Tel Communications, Inc.**

**Complainant**

**v.**

**Illinois Bell Telephone Company,  
d/b/a Ameritech Illinois**

**Respondent**

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**Docket No. 02-0160**

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**BRIEF OF THE STAFF OF  
THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission respectfully submits this its initial brief and reply to the initial briefs filed by Illinois Bell Telephone Company d/b/a Ameritech Illinois (the “Company” or “Ameritech” or “Ameritech Illinois”) and Z-Tel Communications, Inc. (“Z-Tel”).

**I. INTRODUCTION**

It cannot be disputed that non-discriminatory access by CLECs to Operations Support Systems (“OSS”) that function properly are critical to developing and maintaining competition in Ameritech’s service territory. The facts of this case clearly demonstrate that a critical component of Ameritech’s OSS has not functioned properly from its initial use by CLECs in general and Z-Tel in particular, and remains defective to this date – namely, Ameritech’s line loss notification (“LLN”) process. LLNs are crucial to CLECs because they are typically the only means by which a CLEC providing service via the unbundled network elements platform (“UNE-P) or resale can learn that one of its customers has switched to Ameritech or to another CLEC. Without this information,

a CLEC will continue to bill its end user even though that end user is now served by another carrier. Further, without timely and accurate LLNs, a CLEC will lose an opportunity to try to winback a customer in a timely fashion, and that consumer may well lose a an opportunity to receive a competitive offer to keep her service with the losing carrier. There are other negative impacts to Z-Tel which have not been detailed here, but which have been described in Z-Tel's brief.

Staff submits that the evidence in this proceeding establishes that Ameritech has violated Section 13-514 of the Public Utilities Act by unreasonably failing to correct the problems and defects with its LLN system in a timely fashion. 220 ILCS 5/13-514. As set forth in more detail below, the relief granted to Z-Tel by this Commission should include Ameritech's correction of all problems with the 836 LLN process and the achievement of parity by granting Z-Tel access to additional reports or data bases and/or limiting the access of Ameritech's retail unit to certain reports or databases. However, Staff does not support restricting Ameritech's use or access to the process currently used to notify Ameritech's ACIS billing system of disconnected customers as Z-Tel requests because such limitation would be potentially harmful to consumers.

## **II. APPLICABLE LEGAL STANDARDS**

Count I of the instant Complaint was filed pursuant to Sections 13-514 and 13-515 of the Act. 220 ILCS 5/13-514 and 13-515. Section 13-514 generally provides that a telecommunications carrier "shall not knowingly impede the development of competition in any telecommunications service market." 220 ILCS 5/13-514. Section 13-514 further lists a number of prohibited actions that are considered to be *per se* impediments to the development of competition. *Id.* Section 13-514 also states that the

Commission is not limited in any way to these enumerated actions and may consider other actions which impede competition to be prohibited. Id.

### **III. EVIDENCE AND ARGUMENT**

#### **A. Z-Tel Position and Argument**

In Z-Tel's Initial Brief, Z-Tel argues that Ameritech has failed to provide line loss data to Z-Tel in a timely, accurate and reliable manner. Z-Tel Communications, Inc. Initial Brief ("Z-Tel IB") at 1-2. Ameritech's alleged conduct, Z-Tel argues, violates Sections 13-514 and 13-801 of the Illinois Public Utilities Act. Z-Tel further argues that Ameritech's alleged failure to deliver accurate 836 LLNs has caused considerable harm to Z-Tel and its ability to serve its customers. Id. As a result of this failure, Z-Tel maintains the Company has been seriously injured and the reputation of the Company is in jeopardy. Id.

Z-Tel's first claim is that Ameritech's 836 LLN is defective and impedes competition. Z-Tel IB at 10. Specifically, Z-Tel maintains that the Company relies upon the line loss notification information from Ameritech to provide service to its customers. Id. However, Z-Tel believes that there are significant and continuing problems and defects in Ameritech's provision of line loss notice to Z-Tel. Id. at 11.<sup>1</sup>

Further, Z-Tel argues that Ameritech's alleged failure to provide accurate and timely line loss notification impedes competition for the following reasons: (1) Ameritech's failure has caused Z-Tel to double-bill its former customers (Id. at 16); (2)

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<sup>1</sup> For example, Z-Tel claims that "Ameritech admits that the 836 Line Loss Notice process it created for CLECs is defective in both the way it is managed, and the way in which it is designed. (Ameritech Exh. 1.F.) The problems that Ameritech acknowledges have been present since the beginning of the process, and some of the defects were only recently discovered. Many of the defects are significant, and it is unconscionable that Ameritech would not discover some of the defects until more than a year after Ameritech began providing UNE-P." Id. At 14.

Ameritech's failure prohibits Z-Tel from auditing its wholesale billing to verify the charges assessed against it by Ameritech (Id. at 19); and (3) Ameritech itself admits that providing more favorable line loss notice to trigger winback marketing efforts does not promote competition. Id. at 21. Consequently, Z-Tel requests this Commission to conclude that the 836 LLN process is defective, and the Commission suspend all Winback marketing efforts by Ameritech until further order of the Commission.

Z-Tel's second claim is that Ameritech discriminates in the provision of operations support systems information to Z-Tel, and the Commission should order Ameritech to provide non-discriminatory OSS. Id. At 24. Z-Tel supports this claim by arguing that the mirror record of the change order that Ameritech delivers from ASON to its retail business unit is superior to the 836 LLN information provided to Z-Tel. Id. Similarly, Z-Tel argues that Ameritech uses the ASON Mirror Record to generate winback marketing material. Id. at 28. More specifically, Z-Tel believes that "Ameritech established a scheme to modify the 836 LLN to eliminate the name of the winning carrier, while at the same time (June 2000) developing an alternative notice that had more information to use in competing against carriers like Z-Tel." Id. at 28.

Z-Tel maintains that it is discriminatory for Ameritech to charge Z-Tel to gain access to Line Loss Information and not charge its own retail operations. Id. Z-Tel believes that Ameritech engages in discrimination in the provision of OSS because Ameritech actually charges Z-Tel for inferior OSS information, while at the same time it provides its retail operations better information at no charge. Id. According to Z-Tel, this form of discrimination, imposing a rate on competing CLECs where there is no rate assessed against Ameritech's own retail operations for better OSS information, can be

eliminated by granting Z-Tel's request for the delivery to Z-Tel of a copy of the ASON file that is sent to the SOI for Z-Tel customer losses. *Id.* Moreover, Z-Tel argues that it is technically feasible for Ameritech to provide a "mirror" copy of the record file that is delivered from ASON to the service order interface. *Id.* at 29.

Z-Tel's third and final claim is that the Company is entitled to relief for Ameritech's continuing violations of Sections 13-514 of the Illinois Public Utilities Act. *Id.* at 31. Specifically, Z-Tel requests that the Commission enter an order first finding that Ameritech discriminates against Z-Tel in the provision of OSS information on Z-Tel customers that are either leaving Z-Tel's network, that are migrating to Z-Tel's network, or that are otherwise changing their status on Z-Tel's network. *Id.* Z-Tel asserts that remedy will place Ameritech in the same position as Z-Tel in relying upon 836 LLN information to update their billing files. Z-Tel believes this interim solution will provide Ameritech with the most incentive to fix and cure, immediately, the 836 Line Loss Notification defects. *Id.*

Z-Tel further requests that the Commission enter an order establishing a more permanent solution that will allow Z-Tel to receive the identical customer change information that Ameritech provides to its own retail operations. Z-Tel further requests that the Commission enjoin Ameritech from engaging in any Winback marketing efforts to Z-Tel's residential or small business customers until such time as Ameritech provides Z-Tel with this file on the same basis that it provides the file to its own retail operations.

Z-Tel requests that the Commission order Ameritech to retain an independent third party to verify and audit that the timeliness and accuracy of all information provided to Ameritech's retail operations is equal to the timeliness and accuracy of the data

provided to Z-Tel. Until such time that the third party can verify that Z-Tel is receiving identical information that Ameritech provides to its own retail operations pursuant to the Commission's order in this case, Ameritech should be precluded from any Winback marketing efforts.

Z-Tel also requests that the Commission order Ameritech to indemnify Z-Tel against any claim brought by former Z-Tel customers that were billed by Z-Tel after terminating their local exchange service, where the billing resulted from Ameritech's failure to provide accurate, timely and reliable Line Loss Notification. Z-Tel requests that the Commission order Ameritech to conduct a complete accounting, at its own expense, of the charges that have been assessed by Ameritech for Z-Tel's purchase of UNEs, switched access, and reciprocal compensation since January, 2001. Z-Tel further requests that the Commission enter an order finding that Ameritech is liable to Z-Tel for the overcharges in network services that Ameritech has imposed, and for Z-Tel's administrative costs and other damages resulting from Ameritech's failure to provide accurate and timely line loss information.

Finally, Z-Tel requests that the Commission impose penalties against Ameritech pursuant to Sections 5-202 and 13-516(a) of the Illinois Public Utilities Act for its violation of Sections 13-514 and 13-801.<sup>2</sup> Z-Tel further requests that the Commission order Ameritech to send a notice similar to the notice sent in Michigan, advising former Z-Tel customers that any double-billing errors by Z-Tel may be the result of errors and

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<sup>2</sup> Under Section 5-202 of the Act, the Commission may impose a penalty up to \$2000 per offense. "Every violation of the Act . . . is a separate and distinct offense and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense." 220 ILCS 5/202



omissions by Ameritech.<sup>3</sup> Finally, Z-Tel further requests that the Commission enter judgment in their favor and against Ameritech awarding Z-Tel compensatory damages of \$800,000, that the Commission award Z-Tel its attorneys fees, that Ameritech reimburse Z-Tel its costs in bringing this action, and that Ameritech be ordered to bear the costs associated with this proceeding.

## **B. Ameritech Position and Argument**

Ameritech's primary response to Z-Tel's Complaint is that the Complaint was unnecessary and should be denied because the Company acknowledged problems with the LLNs and was working to respond to and correct the LLN problems alleged in the Complaint in a reasonable and expeditious manner. Opening Brief of Illinois Bell Telephone Company (Ameritech Illinois) ("Am. Op. Br."), pp. 1-2. Ameritech contends that Z-Tel had no intention of working out these problems by agreement and ignored Ameritech's February 21 response to Z-Tel's statutorily required pre-suit notice letter. *Id.* Ameritech contends that the LLN issues are "under control"<sup>4</sup>, although two of the system fixes have not yet been implemented. *Am. Op. Br.*, p. 3. Ameritech stresses that it is committed to identifying and resolving all LLN problems. *Id.*

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<sup>3</sup> Z-Tel requests that the form of the notice be similar to the form in Z-Tel's Cross Exhibit 11 and that the notice be sent to all Ameritech Winback customers. The Notice would provide as follows:

To Whom it May Concern:

You may have experienced double billing after taking service from another Competitive Local Exchange Carrier (CLEC). If so, please be advised that the continued billing from your previous local service provider resulted from SBC Ameritech – Illinois process issues that hampered your previous local service provider from receiving a timely notice of your decision to change to another local service provider. Please be assured that SBC is taking the necessary steps to identify and correct its processes. Thank you for your understanding. If you have any questions please contact Ameritech at \_\_\_\_\_.

See Z-Tel Cross Exh. 11; Tr. 399-400.

With respect to Z-Tel's discrimination claim, Ameritech contends although different processes are involved that the 836 LLNs used to notify Z-Tel of lost customers provide equivalent information in the same time frame as the line disconnect file ("disconnect file") provided to Ameritech Illinois' retail operations ("Ameritech retail"). Am. Op. Br., p. 3. Ameritech further contends any disparities between the 836 LLNs and the disconnect file due to deficiencies not yet completely corrected in the 836 LLN process are addressed by the emergency relief already granted by the Commission. Am. Op. Br., pp. 3-4. Although not conceding any claim of discrimination, Ameritech has also offered to stop providing the disconnect file to Ameritech retail and instead to rely exclusively on the 836 LLNs as soon as practicable no later than the end of May, 2002. Am. Op. Br., p. 4.

With respect to the substantive allegations Ameritech contends that it has not acted knowingly and unreasonably to impede the development of competition in violation of Sections 13-514 and 13-515 of the Act and has not breached its Interconnection Agreement with Z-Tel. Am. Op. Br., p. 4.

Ameritech's Opening Brief describes the process involved when Z-Tel or another CLEC signs up an Ameritech customer. Am. Op. Br., pp. 8-9. Ameritech states that Ameritech retail receives notice of lost customers through the disconnect file. Am. Op. Br., p. 9.<sup>5</sup> Ameritech's Opening Brief also describes the process involved in providing an 836 LLN to a CLEC when they lose an existing customer served via UNE-P or resale

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<sup>4</sup> It is interesting to note Ameritech's use of the words "under control" rather than "fixed", even at this late date in the proceeding.

<sup>5</sup> Ameritech's summary omits the fact that Ameritech retail does not rely at all on the disconnect file to terminate billing after a customer migrates to an alternative provider. Instead, the ASON system automatically flows disconnect information to Ameritech's ACIS billing system, which terminates billing of (continued...)

to another CLEC. Id. Ameritech contends the LLN is generated within one hour of issuance of the 865 Completion Notice (the notice to the winning CLEC). Id. Ameritech's Opening Brief also describes the process involved in providing an 836 LLN when a CLEC loses an existing customer to Ameritech retail. Am. Op. Br., pp. 9-10. In that situation, Ameritech retail processes its own service orders to establish service. Id. Ameritech retail also faxes information to the wholesale unit's local service center ("LSC") so that an 836 LLN can be generated.<sup>6</sup> Id.

Ameritech states that the deficiencies with the LLN process can be categorized as either methods and procedures ("M & P") issues or system issues. Am. Op. Br., p. 12. M & P issues involve manual handling errors, where as system issues involve problems with the software applications. Am. Op. Br., pp. 12-14.

### **C. Staff's Response to Ameritech's Arguments**

Ameritech contends that there is no record evidence of the extent to which Z-Tel was adversely affected by the deficiencies with Ameritech's LLN process. Am. Op. Br., p. 14. Ameritech's argument in this regard is unpersuasive. Ameritech admits, as it must, that LLN problems persist to this very day. Am. Op. Br., p. 3. The primary conduct at issue in this proceeding is Ameritech's failure to provide accurate, timely and complete LLNs to Z-Tel. The ongoing deficiencies have yet to be fully remedied. Given

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retail customers that have migrated to an alternative provider. T. 410-411.

<sup>6</sup> Ameritech's description of the process is unnecessarily confusing. Unless the service order data is being sent or input in an untimely manner, an 836 LLN is not generated concurrently with the fax of the service order information to the wholesale LSC. Rather, manual input of the service order information by the wholesale LSC representative is one of the steps necessary for Ameritech's system, as designed, to successfully generate an 836 LLN at such time as all related service orders are processed to completion. As explained below, one of the problems with Ameritech's 836 LLN process that caused LLNs not to be given to Z-Tel when they should have is that an 836 LLN is not created by Ameritech's system if any of the service order numbers are keyed incorrectly or if the service order data is not entered in a timely manner.

these facts, Ameritech cannot justifiably contend that Z-Tel's Complaint must be rejected because Z-Tel has not specifically established the extent of the problem caused by Ameritech.

Although Ameritech concedes that deficiencies in its 836 LLN process have resulted in missed, untimely and inaccurate LLNs to Z-Tel, it contends that the evidence does not demonstrate that "these deficiencies were 'knowingly' caused or perpetuated by Ameritech Illinois or that Ameritech Illinois ever acted, or failed to act, with an intent to impede competition, both of which [Ameritech further contends] are requirements for a finding of liability under Section 13-514. Am. Op. Br., p. 24. Ameritech's construction of Section 13-514 is erroneous, and its application of the facts is similarly flawed. The knowledge requirement of Section 13-514 is simply a requirement that the offending carrier have knowledge of the behavior or actions, or lack thereof, alleged to impede the development of competition in a telecommunications services market, not that the carrier knowingly acted with an intent to impede competition. In fact, Section 13-514 enumerates per se impediments to the development of competition that specifically do not require a showing of intent. 220 ILCS 5/13-514 (1)-(12). Ameritech's contention that Section 13-514 requires a showing of intent is unfounded; Section 13-514 plainly contains no such requirement. *Primeco Personal Communications v. Illinois Bell Telephone Communications (Ameritech Illinois)*, Ill.C.C. Docket No. 00-0670, 2001 Ill. PUC LEXIS 475, Order, p. 33 (April 11, 2001), *rehearing granted in part*, Order (May 23, 2001), *vacated pursuant to settlement*, Order (October 2, 2001) (*Primeco Order*). There is no dispute (i) that Ameritech was aware as far back as December of 2000 of various deficiencies with its LLN process, and (ii) that Ameritech was aware of the continuing

LLN problems thereafter.<sup>7</sup> Thus, Staff submits that the only real issue is whether Ameritech's behavior or actions, or lack thereof, constituted one of the enumerated per se impediments to competition set forth in Section 13-514 or, since the Commission is not limited to the enumerated impediments, an impediment to competition as determined by the Commission. 220 ILCS 5/13-514.

Ameritech analyzes in some detail Z-Tel's business documents supporting its time line regarding LLN issues, and contends that those documents demonstrate that Ameritech responded reasonably and diligently to each specific concern raised by Z-Tel. Am. Op. Br., pp. 24-28. The compressed schedule of this docket has not afforded Staff adequate time to become sufficiently familiar with Z-Tel's and Ameritech's documents so as to respond to Ameritech's review of the documents. Presumably, Z-Tel will address Ameritech's specific contentions in its reply brief.<sup>8</sup> Based on its fact based analysis of the documents, Ameritech contends that it cannot be found to have acted to impede competition. Am. Op. Br., p. 28. Staff disagrees with Ameritech's contention. The uncontested evidence in this proceeding establishes that, regardless of Ameritech's response to each specific complaint or issue, its overall behavior and actions, or lack thereof, constituted an impediment to competition.

In Ameritech witness Glen Sirles late filed exhibit (Sirles Direct, Ameritech Exh. 1, Schedule F) dated March 27, 2002, Ameritech identified 24 types of issues and 30

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<sup>7</sup> Additionally, consistent with Section 13-515 of the Act, Z-Tel sent a letter to Ameritech before filing its complaint notifying Ameritech of its alleged Section 13-514 violations and providing Ameritech 48 hours to correct such violations. Pursuant to Section 13-515(c), these factors create a rebuttable presumption of Ameritech's knowledge of alleged violations for Section 13-514 purposes.

<sup>8</sup> However, Staff would note that Ameritech's review of Z-Tel's specific complaints through Ameritech Cross Group Exhibit No. 1 overlooks events with other carriers. See e.g., T. 149.

total problems related to loss notifications since January 2001<sup>9</sup>. Eighteen of the problems were identified in January 2002 or later. To Staff, this is a strong indication that Ameritech did not perform a complete investigation into the line loss notification issues until the December 2001/January 2002 time period. Also, this concentrated effort falls just after the Michigan Commission issued its interim 271 on December 20, 2001<sup>10</sup>. In their interim order the Michigan Commission found that Ameritech Michigan's failure to provide timely notification of customer losses to CLECs is anticompetitive and an egregious neglect of Ameritech's duty<sup>11</sup>. From these facts, it is reasonable to conclude that Ameritech only took steps to investigate the entire process and perform a complete root cause analysis of the loss notification issues after the interim order came out in Michigan.

It is unacceptable that the company only took steps to examine the entire situation and not just address the issues one at a time until a State Commission became involved. If there were a truly competitive environment in Illinois it would not take regulatory oversight in order for Ameritech to address major problems that their wholesale customers are experiencing. The sheer number and variety of problems related to loss notifications which have been uncovered are indicative that there is not just a small glitch in Ameritech's systems and manual processes that has caused loss notifications to be inaccurate and untimely but that the problems are on more of a systemic nature. Upon the implementation of new system functionality it is the

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<sup>9</sup> The average number of days that it took Ameritech to address the issues once identified (from the dates taken in Glen Sirles late filed exhibit, schedule F) was 78 days and the longest fix duration was 235 days. There are also two issues identified in the exhibit that have not yet been fixed.

<sup>10</sup> Michigan Case No. U-12320.

<sup>11</sup> Michigan Case No. U-12320, Opinion and Order dated December 20, 2001 page 6. Z-Tel Amended Complaint, Exhibit G.

responsibility of the company to test the changes and or functionality they are putting in place. While Staff will admit that not all errors or problems will be found during an internal test, the fact that Ameritech has uncovered 30 different problems with the process since January 2001 is indication to Staff that Ameritech never fully tested the functionality that they implemented back in 1997. T. 351-354. Ameritech had only been reacting to specific issues and concerns that Z-Tel raised and failed to take a proactive approach to resolving errors. The fact that Ameritech has repeatedly needed to make fixes and retrain its customer service representatives shows that Ameritech knew its loss notification transactions were not working correctly. Failing to correct the problems after 16 months in Staff's opinion is unreasonable.

If one analogizes the problems resulting from Ameritech's LLN system deficiencies to leaks in a dike, Ameritech's contention is basically that it diligently worked to plug each and every one of the leaks as they occurred. Stopping leaks is helpful and commendable, but when serious leaks continue for an extended period of time, action must be taken by the responsible party to find the root cause of the leaks so as to prevent future leaks from ever occurring. The undisputed continuation of the LLN problems for more than a year clearly demonstrates that Ameritech failed in this regard. Moreover, these facts lead to the inevitable conclusion that Ameritech either failed to perform any sort of root cause analysis, or that any such analysis that was performed was deficient. In either case, Ameritech unreasonably delayed correcting its LLN deficiencies. This action or lack of action meets a number of the per se impediments to the development of competition. It clearly had a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers. Moreover,

Ameritech also had knowledge that its LLN deficiencies were impeding competition for an extended period of time. Also, Ameritech is the only party in this situation that has the ability to correctly and accurately inform Z-Tel when they have lost a customer. Therefore, Ameritech holds all of the cards and Z-Tel is dependant upon Ameritech to correct and fix the problems related to the LLNs. Staff submits that Ameritech's persistent LLN problems and Ameritech's behavior with regard to these issues must be found to constitute a violation of Section 13-514.

Ameritech cites to the 48 hour notice requirement in Section 13-515(c), and argues that it has not violated Section 13-514 because, Ameritech contends, it has been working aggressively to resolve system and process deficiencies before the letter required by Section 13-515(c) was ever written. Am. Op. Br., p. 29. Ameritech further argues that it has not engaged in any wrongful conduct at the time the letter was written or since it was written. Am. Op. Br., p. 30. Specifically, Ameritech cites to this Commission's order in *21st Century Telecom of Illinois, Inc. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Ill. C.C. Docket No. 00-0219, Order (June 15, 2000) ("21<sup>st</sup> Century") finding an agreement to correct may be as meritorious and dispositive as actually correcting the problem. Id.

Staff disagrees with Ameritech's position. The statutory notice prerequisite to filing contained in Section 13-515 does not operate as a statute of limitations barring all actions under Section 13-514 involving conduct that occurred prior to the 48 hour notice. Further, the facts of the instant case are clearly distinguishable from the facts presented in the *21<sup>st</sup> Century Order*. In *21<sup>st</sup> Century* the Complainant charged Ameritech with disabling certain equipment used by Ameritech to provision AXT service



within the buildings in which 21st Century customers reside. 21<sup>st</sup> Century at p. 1. “AXT is a retail service which allows for the origination of telephone calls from a building lobby to an apartment by means of lobby phones equipped with push buttons. This service is the only way a tenant in a building subscribing to AXT service, is informed of a visitor and can let the visitor in without going to the building lobby and, as such, is viewed as an essential service to the building tenant.” 21<sup>st</sup> Century at 6-7.

Ameritech’s repeated assurances that the problems with its LLN system were being addressed, without ever actually identifying and resolving the system deficiencies, is itself unreasonable and should not be sanctioned by the Commission.

#### **D. Staff’s Position**

Ameritech’s line loss notification process introduced unnecessary points of failure into the system. At the same time, Ameritech unilaterally implemented a different process, the loss disconnect report, for itself that did not contain the same possible points of failure. In addition the loss disconnect report contains many more fields of information than the 836 transaction (Tr. 224-225, 295-297, Z-Tel Cross Exhibit 3) which is provided to Z-Tel. Ameritech had the means to determine that its system design for the loss notifications sent to CLECs was defective and would result in unnecessary LLN errors. Meanwhile, Ameritech implemented a different process for its retail arm that provides more information than is provide to CLEC and is a more streamlined process. Ameritech’s conduct in this regard and their failure to address the LLN problems up front has impeded competition. In light of the above, Staff requests that the Commission adopt its recommendations.

## **1. Line Loss Notification**

Staff recommends that this Commission require Ameritech Illinois notify its retail organization of a customer loss in the same manner as Ameritech Illinois notifies its wholesale customers (or vice versa). Staff believes that in order to ensure loss notifications sent to CLECs and Ameritech retail are in parity with one another, the Company should trigger loss notifications for its retail and wholesale organization by the same set of events. Additionally, the Company should communicate loss notifications for its retail and wholesale organization in the course of the same transaction.

However, Staff would like to point out the even if Ameritech retail were to stop using the loss disconnect report and begin using the 836 transactions as the CLECs do, Ameritech would not be harmed in the same way as CLECs if the problems with the LLNs persist. Z-Tel and other CLECs rely on the line loss notices in order to stop billing their end users. Ameritech's billing systems on the other hand are updated independently from the generation or receipt of a loss notification transaction to its retail organization (T. 406). The only purpose for which Ameritech retail uses the 836 notice or the loss disconnect report is to initiate their winback marketing activities. Therefore, regardless of the direction taken by this Commission to ensure that the transactions by Ameritech retail and Z-Tel are the same they will never be truly parallel situations because the companies rely on the notices for different purposes. If Ameritech retail does not receive a loss notice, it does not interfere with Ameritech's process to halt their billing systems and Ameritech does not double bill their customers as Z-Tel does when it does not receive an accurate or timely line loss notification.

Staff recommends Ameritech Illinois use the 836 transaction or loss notification to inform both CLECs and Ameritech retail of lost customers. Alternately, Ameritech must provide CLECs the option to receive the same loss disconnect report currently provided to Ameritech retail in addition to receiving the 836 notices<sup>12</sup>. Ameritech has already acknowledged that it generates the 836 transaction for Ameritech retail but that the retail organization does not use this notification<sup>13</sup>. It is Staff's understanding that the 836 loss notification currently generated for Ameritech retail is generated from the same set of events or process as the 836 loss notifications generated for other carriers. While Ameritech has indicated that they plan to discontinue the generation of the 836 notice to their retail organization with the rollout of their LSOG 5 or April 24, 2002 release, Ameritech witness Sirles indicated that Ameritech could resume the use of the 836 line loss notifications as a basis for its retail operations for purposes of avoiding the appearance of discriminatory treatment<sup>14</sup>

Ameritech has failed to act and this has had a substantial adverse effect on Z-Tel's ability to provide service to its customers. If Ameritech can not provide timely and accurate line loss notices to Z-Tel then Z-Tel can not accurately stop billing their customers when they disconnect their service from Ameritech and Z-Tel will continue to bill their customers for service which is inappropriate. Z-Tel must rely on Ameritech to notify them when they have lost a customer due to another the customer switching to another CLEC or to Ameritech. Ameritech has substantial control over the quality,

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<sup>12</sup> It is Staff's understanding that in the other SBC states outside the Ameritech region CLECs, today have the option of receiving a loss disconnect report, the 836 loss notifications or both. In the Ameritech region the only option available to CLECs are the 836 loss notifications.

<sup>13</sup> Glen Sirles Testimony at 107-111.

<sup>14</sup> Id. at 187-189.

reliability of its systems and therefore by delaying or affecting the information from flowing Ameritech knows that it can potentially harm its wholesale customers.

The Commission should require that Ameritech take the following steps immediately to attempt to rectify the harm that they have caused to Z-Tel;

- (1) Ameritech must fix all root problems associated with the line loss notifications or 836 transactions.
- (2) Ameritech should provide for a parity situation when it comes to line loss notices between its retail organization and its wholesale customers. At a minimum, Ameritech should make available the option to Z-Tel to receive the same information as Ameritech provides to its retail organization today in the form of the loss disconnect report in addition to receiving the 836 loss transactions.
- (3) Ameritech's performance measure which reports on loss notifications, MI 13 should be modified to record the time from the completion of the disconnect transactions and not from the time the service order completion notice was sent to the new carrier.
- (4) Ameritech should be found in violation of Section 13-514. Staff agrees with Z-Tel that penalties may be appropriate, and pursuant to Section 766.410 of the Commission's rules, this Commission should issue notice of a hearing to hear additional evidence and consider the imposition of penalties.

## **2. Customer Notification**

Staff recommends that this Commission require Ameritech to send a notice advising Ameritech customers that wrongful billing by Z-Tel may have been caused by Ameritech's failure to timely advise Z-Tel that the customer switched local service. Ameritech admitted in response to Z-Tel's original complaint that it has acknowledged

that delays and/or errors in the line loss notifications provided by Ameritech Illinois to Z-Tel have resulted in Z-Tel continuing to bill customers after the customers have disconnected Z-Tel's services. Ameritech Verified Answer at p. 5. Moreover, Staff believes the Commission should take into account that some wrongful billings may occur for reasons unrelated to the line loss notification issue. While it appears that Ameritech's line loss notification problems are the major cause of wrongful double billing, it is unlikely that that such problems are the only cause of wrongful double billings by Z-Tel. For example, it is reasonable to assume that some wrongful billings may be the result of errors contained in initial customer service records, customer service representatives could produce unintentional errors, and consumers could accidentally give erroneous information.

Staff further recommends that such notification be targeted to potentially affected customers, rather than all of Ameritech's customers. It is important that those consumers who receive or who are likely to receive double bills as a result of Ameritech's line loss notification problems be advised of the probable cause of such double billing. Staff is not aware of any consumer benefit to mailing such a notice to all Ameritech customers, especially those customers who are satisfied with Ameritech's service, who have not switched telephone service, or may not ever contemplate switching their service. Staff would also point out that the notice ordered by the Michigan Public Service Commission was limited to "Winback customers (customers that migrated from a CLEC back to Ameritech)". Amended Complaint, ¶ 18.

Staff recommends that the notice remedy be granted primarily on a going forward basis and end at such time as the line loss notification issue is resolved. It is not clear

from Z-Tel's Amended Complaint when its requested relief should start and end. In Staff's opinion, it is reasonable to notify all Winback customers on a going forward basis because it is not possible to identify ahead of time the specific customers who may be affected by Ameritech's line loss notification problems. As a result, the first notice should be sent to customers that have switched back to Ameritech as of November 1, 2001. It is also self-evident that the need for the notice will end at such time as the underlying problems are resolved.

Staff further requests this Commission to note that providing notice to all consumers has the potential to harm competition. Staff believes that notice of this magnitude may suggest to consumers that they may be wrongfully billed if they switch telephone companies, when in fact, they may not be wrongfully billed. Notice to all consumers may cause consumers who are contemplating switching carriers to not make the switch, because they do not want the inconvenience of having to work out billing problems, when a billing problem may not occur. This type of notice may also cause consumers contemplating a change in carriers to stay with their existing carrier and calling plan, thus eliminating the possibility of saving money or receiving a calling plan more suited to the consumer. Furthermore, mailing all customers may also encourage unfounded double billing claims (through confusion and/or possibly consumer fraud), causing Z-Tel, other CLECs and/or Ameritech to waste resources investigating groundless complaints. Sending comprehensive notice to unaffected consumers equates to junk mail, thus creating the possibility of future important mailings being ignored by customers. Lastly, sending a wide spread mailing may cause

customers to inundate Ameritech's customer service center(s) with questions, thereby prohibiting customers with legitimate problems from being served by Ameritech.

In this proceeding, with respect to how implementation of Staff's proposed notice remedy should be accomplished, Staff recommends that Z-Tel provide customer mailing information to Ameritech in situations where Ameritech does not have the appropriate customer. Staff believes that Ameritech should direct its initial mailing to all known previous and current customers who have been won back by Ameritech from Z-Tel since November 1, 2001. Then, on a monthly basis until the line notification problems are fixed, Ameritech should mail notices to all new customers won back from Z-Tel.

Staff recommends that the Commission allow Staff to review and approve the notice to be delivered to customers to ensure that the information is clearly presented and reflects the ultimate decision of the Commission. The focus of the CSD is what is best for the consumer. Switching from one telecommunications carrier to another should be seamless to consumers. A consumer has no knowledge of a line loss notification, however, a consumer can unknowingly be greatly impacted by this transaction. Most customers are savvy enough to know when they have been billed twice, but may never realize who is at fault. The delivery of accurate, timely, and reliable line loss notification is of utmost importance. The fact that a customer receives an accurate bill and receives the service quality that it has paid for is also of utmost importance. By the evidence provided in this docket, it appears that the two companies have been working to resolve this issue for some time.

Accordingly, with respect to the issue of customer notifications, Staff makes the following recommendations: (1) this Commission require Ameritech to send a notice

advising Ameritech customers that wrongful billing by Z-Tel may have been caused by Ameritech's failure to timely advise Z-Tel that the customer switched local service; (2) such notification should be targeted to potentially affected customers, rather than all of Ameritech's customers; (3) the notice remedy should be granted primarily on a going forward basis, unless previous customer information is available, and end at such time as the line loss notification issue is resolved; (4) that Z-Tel provide customer mailing information to Ameritech in situations where Ameritech does not have the appropriate customer; and (5) the Commission allow Staff to review and approve customer notifications for purposes of ensuring that the information is clearly presented and reflects the ultimate decision of the Commission.

#### **IV. CONCLUSION**

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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